

## **ARTICLE 9**

### **DISCIPLINARY ACTION**

The parties recognize the authority of the Employer to reprimand in writing, suspend, discharge or take other appropriate disciplinary or corrective action against an employee for just cause.

Discipline, when invoked, will normally be progressive in nature, however, the Employer shall have the right to invoke a penalty which is appropriate to the seriousness of an individual incident or situation.

#### **A. Investigation and Representation.**

Allegations or other assertions of failure of proper employee conduct or performance are not charges, but constitute a basis for appropriate investigation by the Employer. The parties agree that disciplinary action must be supported by timely and accurate investigation. For purposes of this Article, investigation to determine whether disciplinary action should be taken is timely when commenced within twenty (20) week days following the date on which the Employer had reasonable basis to believe that such investigation should be undertaken.

The employer shall provide notice in writing of the investigative conference/interview.

The employee shall not be subjected to questioning by more than one supervisor/investigator at a time.

An employee is required to give prompt, full and accurate answers, to the extent possible, to questions put to him/her by the Employer concerning any matter regulated by the Employer, related to conduct or performance, or which may have a bearing upon the employee's fitness, availability or performance of duty. During the course of an investigation, the Employer will avoid duplicating questions unless necessary to clarify the employee's response.

Written questionnaires may be used to initiate or further an investigation. The Employer will avoid duplicating questions contained on the initial questionnaire on any follow-up questionnaire given to the employee under investigation. If the employee's own conduct is the direct subject of the investigation and a written statement or completion of a questionnaire is required, at the time it is turned in the employee shall be provided a copy of the questionnaire and a copy of the response. The employee shall then have the opportunity to review, amend, or correct the statement prior to the end of their next regularly scheduled shift.

An employee shall be entitled upon request to the presence of a Union Representative at a disciplinary conference at which discipline or a less than satisfactory service rating may or will take place, or at an investigative interview

of the employee by the Employer regarding allegations or charges of misconduct against the employee which if substantiated could result in any disciplinary action. During the course of an investigatory interview, if it is determined that the employee being interviewed could become the subject of an investigation, the interview will immediately be stopped and the employee will be offered the opportunity to obtain representation before the interview is continued.

It shall not be the policy of the Employer to take disciplinary action in the course of an investigation unless an emergency suspension or removal from the premises as provided in this Article is warranted. If the MSEA Representative is to be an attorney certified by MSEA, the employee or MSEA shall give as much notice as possible to the Employer.

#### **B. Disciplinary Action and Conference.**

1. Whenever an employee is to be formally charged with a violation of any obligation, rule, regulation or policy, or charges are in the process of being prepared, a Disciplinary Conference shall be scheduled and the employee shall be notified in writing prior to the conference of the claimed violation and disciplinary penalty or possible penalty contemplated. Nothing shall prevent the Employer from withholding a penalty determination until after the Disciplinary Conference provided herein has been completed.

Whenever it is determined that disciplinary action is appropriate, a Disciplinary Conference shall be held with the employee at which the employee shall be entitled to MSEA representation. The MSEA must be notified by the employer and requested by the employee. If representation is not desired by the employee, a statement of waiver of representation will be signed by the employee. A copy of the waiver will be forwarded to the MSEA Central Office. No Disciplinary Conference shall proceed without the presence of a requested Representative or the waiver signed by the employee. The Representative shall be a local Steward, or an MSEA Staff Representative so that scheduling of the Disciplinary Conference shall not be delayed. The employee shall be informed in writing, of the nature of the charges against him/her and the reasons that disciplinary action is intended or contemplated. Except in accordance with Sections C.2. and D. of this Article, an employee shall be promptly scheduled for a Disciplinary Conference. The Employer shall provide one copy of all written documents being used as the basis for determining disciplinary action, at the commencement of the disciplinary conference. Questions by the employee or Representative will be fully and accurately answered at such meeting to the extent possible. Response of the employee, including his/her own explanation of an incident if not previously obtained, or mitigating circumstances, shall be received by the Employer. The employee shall have the right to make a written response to the results of the Disciplinary Conference which shall become a part of the employee's file.

The employee shall be given and sign for a copy of the written notice of charges and disciplinary action if determined. Where final disciplinary action has not been determined the notice shall state that disciplinary action is being contemplated. Disciplinary action, if forthcoming, shall be initiated within fifteen (15) calendar days of the Disciplinary Conference, except in the Department of Corrections where it shall be initiated within forty-five (45) calendar days of the Disciplinary Conference unless otherwise modified in secondary negotiations. The employee's signature indicates only that the employee has received a copy, shall not indicate that the employee necessarily agrees therewith, and shall so state on the form. If the employee refuses to sign, the supervisor will write "Employee refused to sign" and sign his/her own name with the date. A witness signature should be obtained under this circumstance.

2. In the case of an employee dismissed for unauthorized absence for three (3) consecutive days or more, or who is physically unavailable, a Disciplinary Conference need not be held, however, notice of disciplinary action shall be given.
3. **Notice.** Formal notification to the employee of disciplinary action shall be in the form of a letter or form spelling out charges and reasonable specifications, advising the employee of the right to appeal. The employee must sign for his/her copy of this letter, if presented personally, or the letter shall be sent to the employee by certified mail, return receipt requested. Dismissal shall be effective on the date of notice. An employee whose dismissal is upheld shall not accrue any further leave or benefits subsequent to the date of notice. If the employee has received and signed for a written letter of reprimand, no notice is required under this Article.
4. Any employee who alleges that disciplinary action is not based upon just cause may appeal such action in accordance with the Grievance Procedure. Reassignment of an employee at the same level, and work location if feasible, incidental to a disciplinary action upheld or not appealed shall not be prohibited or appealed, provided the possibility of such reassignment was stated to the employee in the notice of disciplinary action. However, the Employer retains the option to reassign as part of the administration of discipline for just cause.
5. Any performance evaluation, record of counseling, reprimand, or document to which an employee is entitled under this Agreement shall not be part of the employee's official record until the employee has been offered or given a copy.

### **C. Emergency Disciplinary Action.**

#### **1. Removal from Premises or Temporary Suspension.**

Nothing in this Article shall prohibit the Employer from the imposition of an emergency disciplinary suspension and/or removal of an employee from the premises in cases where, in the judgment of the Employer, such action is warranted. As soon as practicable thereafter, investigation and the Disciplinary Conference procedures described herein shall be undertaken and completed. An Appointing Authority may suspend an employee for investigation. The suspension shall be superseded by disciplinary suspension, dismissal, or reinstatement within seven (7) calendar days unless extended by the Appointing Authority. Notice of the extension shall be concurrently served upon MSEA and the employee, stating the reasons therefore. If disciplinary action is not taken against an employee within the seven (7) days (or extension), the employee shall receive full pay and benefits for the period of temporary suspension.

#### **2. Suspension for Criminal Charge.**

Any employee arrested, indicted by a grand jury, or against whom a charge has been filed by a prosecuting official for conduct on or off the job, may be immediately suspended. Such suspension may, at the discretion of the Appointing Authority, remain in effect until the indictment or charge has been fully disposed of by trial, quashing or dismissal.

The employee's name, home address, or photograph shall not be released to the press or news media.

Nothing herein shall prevent an employee from grieving the reasonableness of a suspension under this Subsection, where the employee contends that the charge does not arise out of the job, or is not related to the job, except that suspension for a felony charge shall not be appealed. An employee who has been tried and convicted on the original or a reduced charge and whose conviction is not reversed, may be disciplined or dismissed from the classified service upon proper notice without the necessity of further charges being brought and such disciplinary action shall be appealed through the grievance procedure. The record from any trial or hearing may be introduced by the Employer or MSEA in such grievance hearing, including Arbitration. Under this circumstance a Disciplinary Conference will be conducted only upon written request of the employee. An employee whose indictment is quashed or dismissed, or who is acquitted following trial, shall be as soon as practicable reinstated in good standing and made whole if previously suspended in connection therewith unless 1) the Employer imposes a suspension for investigation under Section E, Suspension for Investigation, of this Article, or, 2) disciplinary charges, if not previously brought, are filed within three (3) weekdays of receipt of notice at the central Personnel Office of the results of the case, and appropriate action in accordance with this Article is taken against such employee. Nothing provided herein shall prevent

the Employer from disciplining an employee for just cause at any time irrespective of criminal or civil actions taken against an employee or irrespective of their outcome.

**D. Resignation in Lieu of Disciplinary Action.**

Where a decision is made to permit an employee to resign in lieu of dismissal, the employee must submit a resignation in writing. This resignation shall be held for twenty-four (24) hours after which it shall become final and effective as of the time when originally given unless retracted during the twenty-four (24) hour period. This rule applies only when a resignation is accepted in lieu of dismissal and the employee shall have been told in the presence of a Representative that he/she will be terminated in the absence of the resignation. The offer of such resignation in lieu of dismissal shall be at the sole discretion of the Employer and the resignation and matters related thereto shall not be grieved.

**E. Suspension for Investigation.**

The Employer may relieve an employee from duty for investigation. A suspension shall be with pay and be superseded by disciplinary suspension or dismissal, or by reinstatement, within seven (7) calendar days or within such extension, as may be approved by the department Personnel Director or his/her designee in writing concurrently to the MSEA Central Office. Where a subsequent disciplinary suspension results, the Employer may count the days of suspension for investigation as part of the penalty.

**F. Suspension for Felony Charges.**

The Employer may suspend an employee while felony charges are pending against him/her.